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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

MISCELLANEOUS PETITION No. 13 OF 2002

Ms. S. H. Butani Petitioner

Vs.

Mr. M. R. Hosangady & Anr. Respondents

Ms. Vijayalaxmi Nikam i/b S.H. Butani, advocate for the petitioner.

Ms. Sushma Burban advocate i/b Advani & Co. for respondent No.1.

Ms. Swati Deshpande, advocate i/b M/s. Bodhanwala & Law for respondent No. 2.

CORAM : S. J. VAZIFDAR, J.

DATE : SEPTEMBER 7, 2007.

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. The petitioner is one of the executors of will and the codicil of one Leela H. Dayal. Respondent No.1 is also an executor of the will and codicil. Respondent Nos. 2 and 3 are executors of the will and codicil as well as beneficieries under the said will. The other beneficiary is one Ranjit Rao.

2. It is a little difficult to follow this petition. Essentially the petitioner's grievence is that the respondents have not cooperated in obtaining the probate of the will

and codicil as well as in the administration of the estate of the deceased. The petitioner therefore, seeks order seeking the explanation of respondent No.1 for his acts, for compensating her for the loss of time and for exemplary costs. The petitioner has also sought an order removing respondent No.1 as the executor. Subsequently prayers were added, pursuant to an amendment.

3. There is a dispute raised even by respondent No.2 regarding validity of the Will and the Codicil.

4. Respondent No.1 has tendered the original Will in this Court. The same shall be retained by the Prothonotory and Senior Master in safe custody. Respondent No.1 further states that he will file a detailed affidavit within 12 weeks from today indicating the manner in which he has dealt with the estate of the deceased and the details of the estate of the deceased which in his possession and/or control.

5. Considering the nature of the petition and the evidence on record, it is not possible to grant any further reliefs in this matter.

The parties are at liberty to adopt appropriate proceedings for enforcing their rights.

6. Considering that the commissioner worked on 4 days for about 5 hours each day, his costs are fixed at Rs.10,000/-. The valuer's costs are fixed at Rs. 4,000/-. The amount shall be paid by respondent Nos. 1 and 2 equally on or before 21st September 2007. In the event of failure to pay the amount, the Commissioner is directed to sell the gold and appropriate the proceeds towards the said costs.